

ENTERED

April 07, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

UNITED STATES OF AMERICA,

§

Plaintiff,

§

VS.

§

0.221 ACRES OF LAND, more or less,
In STARR COUNTY, TEXAS; MARCOS
MUNIZ, JR; et al.,

§

§

§

Defendants.

CIVIL ACTION NO. 7:21-cv-00004

SCHEDULING ORDER

The Court now considers the “Joint Discovery/Case Management Plan Under FRCP 26(f)” filed by the United States on behalf of all parties in the case.¹

This action was commenced on January 5, 2021 by the United States to take land to construct and operate fencing, roads, and related structures to secure the United States/Mexico southern international border.² The case was originally set for an initial pretrial conference on March 16, 2021.³ On January 20, 2021, President Joe Biden issued a proclamation directing the applicable executive departments and agencies to “develop a plan for the redirection of funds concerning the southern border wall” no later than March 21, 2021, and directed a pause on work on the southern border wall while the plan was being developed.⁴ On the United States’ motion⁵

¹ Dkt. No. 52.

² Dkt. No. 1.

³ Dkt. No. 4.

⁴ Proclamation No. 10142, §§ 1–2, 86 Fed. Reg. 7,225, 2021 WL 197402 (Jan. 20, 2021).

⁵ Dkt. No. 42.

and consistent with the pause granted by the proclamation, the Court continued the parties' initial pretrial conference until April 13, 2021.⁶

In the joint discovery/case management plan, the United States provides that it sent a letter to all *pro se* Defendants on January 8, 2021, in which it informed Defendants that “[t]he United States anticipates the discovery process in this case will take approximately six (6) months to complete.”⁷ The letter further stated that if the Defendants did not respond by March 8, 2021, the United States “will assume [they] do not have a position on the joint discovery/case management plan.”⁸ According to the United States, “none of the parties have expressed opposition to the discovery timeframe put forth by the undersigned counsel.”⁹ The Court also notes that, to date, no Defendant has appeared in this case.

Because no Defendant has appeared in this case or otherwise indicated opposition to the plan proposed by the United States, the Court enters the following schedule pursuant to Federal Rule of Civil Procedure 16(b). The initial pretrial conference previously scheduled for April 13th is **CANCELLED**. The following actions shall be completed by the dates indicated:

PRETRIAL EVENTS	DEADLINES
Deadline to file all documentation adding, substituting, disclaiming, or dismissing interested parties. ¹⁰ <u>N.B.</u> ¹¹ : If necessary, the United States may also file amended condemnation documents or an amended schedule of interested parties.	July 7, 2021
Deadline for all parties to designate expert	August 6, 2021

⁶ Dkt. No. 45.

⁷ Dkt. No. 52 at 1, ¶ 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ See FED. R. CIV. P. 71.1(c), (i).

¹¹ See *N.B.*, BLACK'S LAW DICTIONARY (11th ed. 2019) (“Note well; take notice — used in documents to call attention to something important.”).

witnesses and provide expert reports in accordance with Federal Rule of Civil Procedure 26(a)(2).	
Deadline for all parties to designate rebuttal expert witnesses and provide expert reports in accordance with Federal Rule of Civil Procedure 26(a)(2).	September 3, 2021
Discovery deadline. Counsel may by agreement continue conducting discovery beyond the deadline, but no extension will be granted because of information acquired in post-deadline discovery. ¹²	October 8, 2021
Deadline to notify the Court whether the parties (1) consent to the Court deciding the issue of just compensation upon briefs and evidence submitted therewith or (2) request an evidentiary hearing on the issue of just compensation. <u>N.B.</u> ¹³ : Parties may request a jury trial or a special commission ¹⁴ or consent to a bench trial. There is no right to jury trial. ¹⁵	October 19, 2021
Deadline to file briefs and submit evidence (or anticipated evidence if an evidentiary hearing is requested) on the issue of just compensation. <u>N.B.</u> : The Court will conduct a preliminary screening of the briefs and anticipated evidence submitted to determine whether the evidence is sufficient to order a jury trial if one is requested. ¹⁶	November 18, 2021

¹² See FED. R. CIV. P. 29(b). The parties have Court approval to stipulate to discovery extensions with the indicated limitation. The parties may not modify deadlines to accomplish Court filings without Court approval. Discovery is generally not filed. See LR5.4, LR26.1.

¹³ See N.B., BLACK'S LAW DICTIONARY (11th ed. 2019) ("Note well; take notice — used in documents to call attention to something important.").

¹⁴ FED. R. CIV. P. 71.1(h).

¹⁵ *Ga. Power Co. v. 138.30 Acres of Land*, 596 F.2d 644, 647 (5th Cir. 1979), *aff'd sub nom. Ga. Power Co. v. Sanders*, 617 F.2d 1112, 1113 (5th Cir. 1980) (en banc).

¹⁶ See *United States v. 320.0 Acres of Land, More or Less in Monroe Cty.*, 605 F.2d 762, 819–20 (5th Cir. 1979); *United States v. 33.92356 Acres of Land, More or Less, in Vega Baja*, 585 F.3d 1, 8 (1st Cir. 2009) (citing *320.0 Acres*, 605 F.2d at 815) ("While the jury tries issues of valuation, the trial judge must screen the proffered best and highest uses . . .").

Deadline to file all pretrial motions, including any dispositive motions, except motions in limine which shall be filed with the Joint Pretrial Order.	December 17, 2021
Deadline to file joint pretrial order, motions in limine, and proposed jury instructions (or proposed findings of fact & conclusions of law). ¹⁷	February 15, 2022
Final pretrial conference and trial scheduling, unless the parties elected for the Court to decide the issue of just compensation upon the briefs and evidence submitted therewith, in which case the conference is automatically cancelled.	March 21, 2022, at 9:00 a.m.

This scheduling order supersedes any earlier schedule, is binding on all parties, and shall not be modified except by leave of Court upon showing of good cause.¹⁸ All other deadlines not specifically set out in this scheduling order will be governed by the Federal Rules of Civil Procedure and this Court's Local Rules.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 7th day of April 2021.



 Micaela Alvarez
 United States District Judge

¹⁷ The Joint Pretrial Order must be in accordance with Appendix B of the Local Rules for the Southern District of Texas and must include the disclosures required by Federal Rule of Civil Procedure 26(a)(3).

¹⁸ See FED. R. CIV. P. 16(b)(4); 6A ARTHUR R. MILLER, MARY KAY KANE & A. BENJAMIN SPENCER, FEDERAL PRACTICE AND PROCEDURE § 1522.2 (3d ed. 1998 & Supp. Oct. 2020).